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(2016) 10 MP CK 0002

MADHYA PRADESH HIGH COURT

Case No: Writ Petition No. 16927 of 2016.

Ganeshi Bai w/o Amar Singh - Petitioner @HASH State of M.P. and Others — APPELLANT

Vs

RESPONDENT

Date of Decision: Oct. 7, 2016

Acts Referred:

- Madhya Pradesh Gram Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993 - Section 122

Citation: (2016) 4 MPLJ 456

Hon'ble Judges: Sanjay Yadav, J.

Bench: Single Bench

Advocate: Shri Dayaram Vishwakarma, learned counsel, for the Petitioner

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sanjay Yadav, J. - Shri Dayaram Vishwakarma, learned counsel for the petitioner.

2. Heard on admission.

3. Petitioner takes exception to the order dated 24.8.2016 passed by Sub Divisional Officer, Gotegaon, district Narsinghpur; whereby, the Election Petition preferred by the petitioner under Section 122 of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 against the election of respondent No. 2 as Sarpanch, Gram Panchayat, Muoar, Janpad Panchayat Gotegaon has been dismissed for non-compliance of Rule 7 of Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995, as the petitioner instead of depositing the security amount of Rs. 500/- with the Prescribed Authority deposited through challan in the Bank.

4. Rule 7 of 1995 Rules envisages:

"7. Deposit of security. - At the time of presentation of an election petition, the petitioner shall deposit with the specified officer a sum of Rs. Five Hundred as security. Where the election of more than one candidate is called in question, a separate deposit of an equivalent amount shall be required in respect of each such returned candidates."

5. Rule 8 of the Rules 1995 provides for that if the provisions of Rules 3, 4 or 7 have not been complied with the petition shall be dismissed by the specified officer after affording an opportunity of hearing.

6. Though it is contended on behalf of the petitioner that depositing the security amount through challan in the Bank was a substantial compliance of Rule 7 of 1995 Rules, however, this Rule has been held to be mandatory by a Division Bench of our High Court in **Babulal Kaliram Kirar and another v. State of Madhya Pradesh and others : 1985 MPLJ 411**; wherein dwelling upon the similar provisions contained in Madhya Pradesh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1962 it has been held:

"12. In the above view of the matter, we hold that even when no objection is raised about the noncompliance of Rule 7 of the Election Rules, it is incumbent on the Tribunal to dismiss the petition on being satisfied about the non-compliance of that rule.

It has no jurisdiction to proceed with its trial."

"Similarly the Division Benmch in **Sarla Tripathi (Smt.) v. Smt. Kaushilya Devi and others [2004 (2) JLJ 263]** observed:

"9.....Rule 8 of the Election Petition Rules clearly provides for dismissal of the petition if the provisions of Rules, 3, 4 or 7 have not been complied with. Therefore, any decision with regard to curability of the defect in verification of the petitioner with regard to the permissibility of the amendment is not relevant in respect of requirement of deposit of security laid down by Rule 7..... Rule 7 is clear, without ambiguity and unequivocal. It requires deposit at the time of presentation of the petition."

7. Presently, since mandatory it is to deposit the security with the Election Petition with the Prescribed Authority, a non-deposit with the Prescribed Authority but deposit it by challan is not a compliance of Rule 7 of 1995 Rules.

8. The impugned order when is tested on above analysis cannot be faulted with.

9. Consequently, petition fails and is dismissed.